(25,736)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 906.

PHILIP LA TOURETTE, PLAINTIFF IN ERROR,

vs.

FITZ HUGH McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 23, 1917.

1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court of the State of South Carolina.

PHILIP LA TOURETTE, Petitioner,

against

FITZ HUGH MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Petition for Writ of Error.

The petition of Philip La Tourette respectfully shows:

I. That he is a bona fide resident and citizen of the State of New York, the United States of America, and that Fitz Hugh McMaster is the Insurance Commissioner of the State of South Carolina under and by virtue of the laws of said State.

II. That he conceives himself to be ag-rieved, and so alleges, by a certain decision made and rendered and a judgment entered by the Supreme Court of the State of South Carolina in the case of Philip La Tourette, Petitioner, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Respondent, the said decision being rendered and filed by the said Supreme Court on the 27th day of June, 1916, the said Court being the highest Court of said State and the Court of last resort for the hearing and letermining of said cause in said State.

III. The said cause of Philip La Tourette, Petitioner, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Respondent, was an action by the plaintiff in the original jurisdiction of the said Supreme Court of South Carolina to compel, by an order of mandamus, the respondent, Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, to
2 issue to the plaintiff Philip La Tourette a license to do and engage in the business of an insurance broker in said State under an Act of the General Assembly of South Carolina, entitled "An Act to Provide for the Licensing of Insurance Brokers," approved the 2nd day of March, 1916, said Act being as follows:

"Section 1. Be it enacted by the General Assembly of the State of South Carolina: The term Insurance Broker, as used in this Act, is declared to be such person as shall be licensed by the Insurance Commissioner to represent citizens of this State for the placing of insurance in insurers licensed in this State or in any other State or country.

Sec. 2. Insurance brokers may be licensed by the Insurance Commissioner upon the following terms and conditions, to-wit: (*a*) The payment of an annual Insurance Department license fee of twenty five dollars ($25.00); (*b*) the filing of a bond approved by the Insurance Commissioner, in the sum of five thousand dollars ($5,000)

for the faithful discharge of his duties; (c) the payment of an additional license fee of 4 per cent. upon the premiums paid or written in the policies of companies not licensed in this State. Such license shall entitle the holder to solicit insurance in any county of this State, but nothing herein shall prevent municipalities from imposing license fees in accordance with their ordinances. Under the terms of this Act only such persons may be licensed as are residents of this State and have been licensed insurance agents of this State for at least two years.

Sec. 3. Such insurance broker shall exercise due care in the placing of insurance and shall procure from the supervising official in the State or country in which the home office of the insurer is located a certificate to the effect that the insurer is safe and solvent and is authorized to do business. He shall furnish the insured a statement showing the financial condition of the insurer and such other information as the insured may require. He shall report to the insurance Commissioner in detail the amount of insurance placed and the premiums paid therefor, and shall pay to the Insurance Commissioner the additional license fee herein provided. He shall submit to the Insurance Commissioner within thirty days after December 31st of each year an annual report of his transactions, and his books, papers and accounts shall at all times be open to the inspection of the Insurance Commissioner or a deputy appointed by him.

Sec. 4. Such insurance broker may divide commissions with agents or brokers in other States or countries or with any agent licensed in this State for any company doing the particular class of insurance desired to be placed through such broker.

Sec. 5. All losses occurring under policies placed through such insurance broker may be adjusted by any licensed agent or adjuster in this State, and all inspections or property and endorsements on policies may be made by a broker licensed under the terms of this Act or any other licensed fire insurance agent in this State authorized so to do.

Sec. 6. The Insurance Commissioner shall pay over to the State Treasurer all license fees collected under the terms of this Act in accordance with the law now regulating like collections. Semi-annually as soon after June 30th and December 31st of each
3 year as may be convenient, he shall render an accounting to the State Treasurer of the additional license fees collected under the terms of this Act, showing the counties and towns in which the property covered by such insurance is located, and shall furnish a duplicate of the same to the Comptroller General, in such manner as shall permit the Comptroller General, who is hereby authorized and directed to do so, to draw his warrant on the State Treasurer for one-fourth of said additional license fee payable to the County Treasurer of the County in which the property is located, which amount shall be for general county purposes. He shall likewise draw his warrant on the State Treasurer for one-fourth of said additional license fee payable to the Treasurer of the municipality in which the property is located, and shall likewise draw his warrant for one-fourth of the additional fee payable to the trustees of the Firemen's

Insurance and Inspection Fund of the municipality in which the property is located.

Sec. 7. All licenses issued under the provisions of this Act shall expire on March 31st of each year, and the license fees may be prorated quarterly after October 1st of each year.

Sec. 8. All Acts or parts of Acts inconsistent with the terms of this Act are hereby repealed.

Sec. 9. This Act shall go into effect upon its approval by the Governor.

Approved 2nd day of March, 1916."

IV. That upon the filing of said petition in the said Supreme Court of South Carolina, the said Court assumed and took jurisdiction of said cause, and thereupon issued a rule to show cause, dated the 11th day of May, 1916, wherein the respondent, Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina was required to show cause, if any he had, before the said Court on the 22nd day of May, 1916, at *19* o'clock A. M., why the prayer of the petitioner should not be granted.

V. That on said 22nd day of May, 1916, at 10 o'clock A. M., the respondent, through the Attorney General of said State, the Hon. Thos. H. Peeples, filed in the Supreme Court by way of return a demurrer to the complaint, and by said demurrer took the grounds:

1.

It is within the proper exercise of the police power of the State to require that persons acting as insurance brokers within the State shall be residents of the State and licensed by it to transact such business in order that the business may be in the hands of trustworthy persons.

4

2.

The business of fire insurance is so affected with the public interest as to justify the State in the exercise of its police power to require the business of insurance brokerage to be exercised only by residents of the State.

3.

That confining the exercise of the business of insurance brokers to residents of the State is not a deprivation of any of the privileges or immunities secured to citizens of other States by the Constitution of the United States.

4.

The provisions of the Act of the Legislature directing to whom license to do business as insurance brokers within the State shall be issued, makes no discrimination against citizens of any other State as such. The requirement that such brokers be residents of this State applies as well to citizens of this State as citizens of other States, residence and citizenship being entirely different things.

5.

The right to carry on business of an insurance broker is not among the fundamental rights belonging to the individual as a citizen of the State.

VI. That after filing of said demurrer the case proceeded to argument in the said Supreme Court of the State of South Carolina, and on the said 27th day of June, 1916, the said Supreme Court rendered and filed its said decision wherein it denied to the plaintiff the relief prayed for, holding that the said Act of the General Assembly of South Carolina, approved the 2nd day of March, 1916, was constitutional and within the purview of the legislative power of the General Assembly of the said State, and especially holding that the provision of Sec. 2, which specifically limited the
5 granting of a license to do and engage in the business of an insurance broker under said act in South Carolina to residents of this State who have been licensed insurance agents of this State for at least two years was constitutional.

VII. That by this holding and decision of the said Supreme Court, and by the judgment entered in accordance therewith, the said Philip La Tourette, being a bona fide resident and citizen of the State of New York has been and is being now denied the privileges and immunities granted to a citizen of the State of South Carolina, contrary to the provisions of Sec. 2, Art. IV of the United States of America, and is also deprived of liberty and property without due process of law, and is denied in said State the equal protection of the law guaranteed to him by the Fourteenth Amendment of the Federal Constitution, as well as by Sec. 5, Art. I of the Constitution of the State of South Carolina.

VIII. That your petitioner has no other remedy than that sought in these proceedings to secure his rights and redress the wrongs done him.

Wherefore your petitioner, Philip La Tourette, presents his petition and assignment of errors and prays that a writ of error do issue out of the Supreme Court of the United States to the Supreme Court of the State of South Carolina to the end that the transcript of the record, proceedings and papers in said matter may be forthwith removed to the Supreme Court of the United States and the errors complained of may be examined into and corrected, and the judgment and decision aforesaid of the Supreme Court of the State of South Carolina be reviewed and reversed, and that the amount of security which the said Philip La Tourette should give and furnish upon said writ of error may be fixed by the Supreme Court of the State of South Carolina, upon the giving of which all further
6 proceedings shall be suspended and stayed until the determination of the said writ of error by the Supreme Court of the United States.

PHILIPP LA TOURETTE,
By JOHN L. McLAURIN,
R. H. WELCH, *His Attorneys.*

7 [Endorsed:] State of South Carolina Supreme Court. Philip La Tourette, Petitioner, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Respondent. Petition for Writ of Error. Welch, Nettles & Tobias, Lawyers, Palmetto Building, Columbia, S. C.

8 UNITED STATES OF AMERICA:

The President of the United States to the Honorable Judges of the Supreme Court of South Carolina, Greetings:

Because in the record and proceedings, as also in the rendition of judgment of a plea, which is in the Supreme Court of South Carolina, before you or some of you, being the highest Court of law or equity in said State, in which the decision could be had in the suit between Philip La Tourette, Petitioner, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Respondent, wherein was drawn in question, a right, title, privilege and immunity claimed by the said Philip La Tourette, under the statutes and laws of the United States, to-wit; That the petitioner, Philip La Tourette, being a bona fide resident and citizen of the State of New York, United States of America, is denied the right as such resident and citizen to obtain a license to do and engage in the business of an Insurance Broker in the State of South Carolina under the Act of the General Assembly of said State, approved the 2nd day of March, 1916, said act being entitled "An Act to Provide for the Licensing of Insurance Brokers," the terms of said act limiting the granting of said license to only residents of said State, the denial and refusal to grant said license being based upon no other grounds whatsoever. That the decision and judgment of the said Supreme Court of the State of South Carolina, in sustaining the constitutionality of that part of said act which limits the granting of a license to do and engage in the business of an insurance broker to residents only of said State denies to the petitioner, a bona fide citizen and resident of the State of New York, the privileges and immunities guarante-d to him by the Constitution of the United States of
9 America and deprives him of liberty and property without due process of law as well as denies to him the equal protection of the law. And the said decision and judgment of the Supreme Court of South Carolina was in favor of the validity of the said statute and against the title, right, privilege and immunity claimed and relied on under the statutes and laws of the United States, and a denial of the same, a manifest error hath happened to the great damage of the said Philip La Tourette, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same at Washington within thirty days from the date hereof in said Supreme Court, to be then and there held, that

the record and proceedings aforesaid being inspected, the said Supreme Court, may cause further to be done therein to correct the error, what of right according*ly* to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 15th day of December in the year of our Lord one thousand nine hundred and sixteen and of the Independence of the United States of America the one hundred and forty first.

RICHARD W. STETSON,
Clerk, U. S. D. C., Eastern Dist., S. C.

Allowed by
EUGENE B. GARY,
Chief Justice of the Supreme Court of the State of S. C.

We accept service of the above writ of error this 15th day of December, 1916.

THOS. H. PEEPLES,
Attorney General.

I do hereby enter an appearance for the defendant in error upon the within Writ of Error.

THOS. H. PEEPLES,
Attorney General.

[Seal United States District Court, Eastern Dist. of So. C.]

10 [Endorsed:] State of South Carolina Supreme Court. Philip La Tourette, Petitioner, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Respondent. Writ of Error. Welch, Nettles & Tobias, Lawyers, Palmetto Building, Columbia, S. C.

11 THE STATE OF SOUTH CAROLINA:

In the Supreme Court of South Carolina.

PHILIP LA TOURETTE, Petitioner,

against

FITZ HUGH MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Citation.

The President of the United States to Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from the date hereof, pursuant to a writ

of error filed in the Clerk's office of the Supreme Court of the State of South Carolina, wherein Philip La Tourette is Petitioner, and you are Respondent, to show cause, if any there is, why the judgment rendered against the said Philip La Tourette, Petitioner, as in said writ mentioned, should not be corrected and why speedy justice should not be done by the parties in that behalf.

Witness the Honorable Eugene B. Gary, Chief Justice of the Supreme Court of the State of South Carolina, this the 15th day of December, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

EUGENE B. GARY,
Chief Justice.

[Seal Supreme Court, South Carolina.]

Attest.
U. R. BROOKS,
Clerk of the Supreme Court.

Service acknowledged of a copy of this citation this 15th day of December, 1916.

THOS. H. PEEPLES,
Attorney General.

12 [Endorsed:] State of South Carolina Supreme Court. Philip La Tourette, Petitioner, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Respondent. Citation. Welch, Nettles & Tobias, Lawyers, Palmetto Building, Columbia, S. C.

13 THE STATE OF SOUTH CAROLINA:

In the Supreme Court of the State of South Carolina.

PHILIP LA TOURETTE, Petitioner,

against

FITZ HUGH MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Assignment of Errors.

And, now comes Philip La Tourette, Petitioner in Error, and makes and files this his assignment of errors.

1.

The Supreme Court of the State of South Carolina erred in holding and deciding that so much of the Act of the General Assembly of the State of South Carolina approved the 2nd day of March, 1916, entitled "An Act to Provide for the Licensing of Insurance Broker"

as contained in Section 2 thereof, that provided for the granting and issuing of a license to do and engage in the business of insurance broker only to residents of the said State that have been licensed insurance agents of the State for at least two years was constitutional.

2.

The Supreme Court of the State of South Carolina erred in not holding that so much of said Act as contained in Section 2 thereof, which limits the issuing of an insurance broker's license only to a resident of the State of South Carolina did not deny to the petitioner, Philip La Tourette, the privileges and immunities guaranteed to him in the State of South Carolina by the Federal Constitution as well as the Constitution of the State of South Carolina.

3.

The Supreme Court of the State of South Carolina erred
14 in not holding that so much of said Act as contained in Section 2, which limits the issuing of said license only to residents of the State who have been licensed insurance agents in the State for at least two years, deprived the petitioner, Philip La Tourette, of liberty and property without due process of law and was denied to him the equal protection of the law as provided in the Constitution of the United States and in the Constitution of the State of South Carolina.

4.

The Supreme Court of the State of South Carolina erred in not holding that so much of said Act as contained in Section 2 thereof which limits the issuance of a license to engage in the business of an insurance broker in said State only to residents of the same who have been licensed insurance agents therein for two years was unconstitutional, because in conflict with the Constitution of the United States and of the Constitution of South Carolina, in that (*a*) the petitioner, Philip La Tourette, a bona fide resident of the State of New York is denied the privileges and immunities granted to the citizens and residents of the State of South Carolina, (*b*) the petitioner, Philip La Tourette is thereby deprived of his liberty and property in the State of South Carolina, (*c*) and the petitioner, Philip La Tourette, is denied the equal protection of the laws of South Carolina.

5.

The Supreme Court of the State of South Carolina erred in not granting the prayer of the petitioner and in not ordering the respondent Fitz Hugh McMaster, the Insurance Commissioner of the State of South Carolina, to issue to him a license to do and engage in the business of an insurance broker in the State of South Carolina
15 under the terms of said Act approved the 2nd day of March, 1916, the said Philip La Tourette having complied with every provision of said Act except that part of Section 2 which con-

ditioned the granting and issuing of a license only to residents of the State of South Carolina who have been licensed as insurance agents in this State for at least two years.

JOHN L. McLAURIN,
R. H. WELCH,
Attorneys for Petitioner in Error.

16 [Endorsed:] State of South Carolina Supreme Court. Philip La Tourette, Petitioner, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Respondent. Assignment of Errors. Welch, Nettles & Tobias, Lawyers, Palmetto Building, Columbia, S. C.

17 THE STATE OF SOUTH CAROLINA:

In the Supreme Court of the State of South Carolina.

PHILIP LA TOURETTE, Petitioner,

against

FITZ HUGH MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

We do hereby enter an appearance for the Defendant in Error upon the within Writ of Error.

THOS. H. PEEPLES,
Attorney General.

Columbia, S. C., 15 Dec., 1916.

18 [Endorsed:] State of South Carolina Supreme Court. Philip La Tourette, Petitioner, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Respondent. Appearance of Attorney General. Welch, Nettles & Tobias, Lawyers, Palmetto Building, Columbia, S. C.

19 THE STATE OF SOUTH CAROLINA:

In the Supreme Court of the State of South Carolina.

PHILIP LA TOURETTE, Petitioner,

against

FITZ HUGH MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

I, U. R. Brooks, Clerk of the Supreme Court of the State of South Carolina, pursuant to a Writ of Error and by way of Return thereto, directed to said Supreme Court of South Carolina by the Supreme Court of the United States in the above entitled cause, and in obedience to the command of such writ, do herewith transmit under my

hand and seal to the Supreme Court of the United States a duly certified transcript of the record and of all proceedings in the case in the above entitled cause, together with the assignments of errors and the petition for the writ of error, and also a true copy of the opinion filed in the case, together with the original writ of error and citation, with acceptance of service thereof. And I do hereby certify that the record herewith transmitted is complete, containing within itself and not by reference, all papers and proceedings necessary to the hearing of said case in the Supreme Court of the United States.

Witness my hand and seal of the Supreme Court of the State of South Carolina this 25 day of December, 1916.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk of Supreme Court of S. C.

20 THE STATE OF SOUTH CAROLINA:

In the Supreme Court of the State of South Carolina.

PHILIP LA TOURETTE, Petitioner,

against

FITZ HUGH MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Bond on Writ of Error.

Know all men by these presents, That Philip La Tourette, and J. G. L. White, surety, are held and firmly bound unto Fitz Hugh McMaster, Insurance Commissioner of the State of South Carolina, in the sum of Five Hundred ($500.00) Dollars, to be paid to the obligee herein, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors and assigns firmly by these presents.

Sealed with our Seals and dated this 4th day of December, 1916.

Whereas the above named Philip La Tourette, hath prosecuted a writ of error from the Supreme Court of the United States to reverse the judgment rendered by the Supreme Court of the State of South Carolina in the case of Philip La Tourette, Petitioner in error, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Respondent in error.

21 Now, therefore, the condition of this obligation is such that if the above named Philip La Tourette, shall prosecute his said writ of error to effect, and if he fail to make the claim good, answer all damages and costs, then this obligation shall be void; otherwise the same shall be and remain in full force.

PHILIP LA TOURETTE.
J. G. L. WHITE.

In the presence of:

HEORGE NIKOLA,
EDWARD W. WADE,
As to Philip La Tourette.
JOHN L. McLAURIN,
GEORGIA C. EDWARDS,
As to the Surety.

Approved:

EUGENE B. GARY,
Chief Justice of Supreme Court of S. C.

We admit service of copy of within Bond this 15th day of December, 1916.

THOS. H. PEEPLES,
Attorney General.

A true copy.

U. R. BROOKS,
Clerk of the Supreme Court.

[Seal Supreme Court of South Carolina.]

22 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1915.

PHILIP LA TOURETTE, Petitioner,

against

FITZ HUGH MCMASTER, as Insurance Commissioner of the State of South Carolina.

June 27, 1916.

The opinion of the Court was delivered by Mr. Justice Hydrick.

The petitioner, who is a citizen and resident of the State of New York, prays for a writ of mandamus, requiring the respondent, as Insurance Commissioner of this State, to issue to him a license, as an insurance broker, under the terms of an act, approved March 2, 1916, entitled, "An Act to provide for the licensing of insurance brokers." The first section of the act declares an insurance broker to be such person as shall be licensed by the Insurance Commissioner to represent citizens of this State in placing insurance with insurers licensed in this State or in any other State or country. The second section prescribes the terms and conditions upon which insurance brokers may be licensed. Among these, it is provided that:

"Only such persons may be licensed as are residents of this State and have been licensed insurance agents of this State for at least two years."

The petitioner has complied, or offered to comply, with all the

terms and conditions of the act, except those prescribed in the provision above quoted, and for his failure to comply with those his application was refused. The sole question is whether that pro-
23 vision of the act is void, on the ground that it discriminates against citizens of other States in favor of citizens of this State, in violation of the provision of section 2, art. IV, of the Federal Constitution, to-wit:

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

It is well settled that insurance is a business affected with such public interest that it may be regulated by the State under the power to legislate for the common good. German Alliance Ins. Co. v. Lewis, 233 U. S. 389, 34 Sup. Ct. 612, 58 L. Ed. 1011, L. R. A. 1915c, 1189. That being so, the power may be exerted to the extent necessary to make proper regulation effective, provided constitutional rights are not infringed.

There are numerous reasons why regulation of the business could not be made more effective by requiring all brokers and agents soliciting business in the State to be residents of the State. It is important for the protection of the interests of the people of the State that the business should be in the hands of competent and trustworthy persons. It is one of many complications, requiring, for its safe conduct, not only expert knowledge, but such knowledge as can be acquired only by experience in the business. Brokers residing within the State would naturally be in better position to ascertain the character of risks—physical and moral—than those residing in other States. By the terms of this act and others regulating the business, the books, papers, and accounts of such brokers are at all times to be open to the inspection of the commissioner, who is given supervisory control of the business for the protection of the insured as well as the insurers. Now, without question, such supervision can be exercised over brokers residing in the State more expeditiously, advantageously, and effectively than if they resided in many differ-
24 ent States of the Union, and the commissioner can more readily ascertain whether they have the requisite skill and ability and are faithful in the performance of their duties and obey the laws of the State. Moreover, they are required to exercise due care in placing insurance, and would be personally liable for neglect of that duty. They are also liable to indictment for violations of the laws of the State regulating the business and for disobeying the lawful orders of the commissioner with respect thereto. It is therefore desirable, if not imperatively necessary for the proper regulation of the business, that they should be residents of the State and subject to the jurisdiction of the *its* Courts. These conclusions are sufficient to show that the provision in question is reasonable.

But, however, cogent may be the reasons for it, it cannot be sustained if it violates the Constitution. We need not consider the extent of meaning of the words "privileges and immunities" used in the provision of the Constitution invoked. It will be sufficient to show that by the provision of the act in question, citizens of this State are granted no privilege by reason of citizenship alone that

may not be as freely enjoyed by the citizens of any other State of the Union upon the same terms and conditions; that is all that the Constitution requires. In Corfield v. Coryell, 4 Wash. C. C. 371, Fed. Cas. No. 3230, Mr. Justice Washington, discussing the meaning of the words "privileges and immunities," says:

"The inquiry is, What are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental, which belong, of right, to the citizens of all free governments, and which have, at all times, been enjoyed
25 by the citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are it would be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole." (Italics added.)

The meaning of this provision of the Constitution was also considered in the Slaughterhouse cases, 83 U. S. (16 Wall.) 36, 77 (21 L. Ed. 394), where the Court says:

"The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens. Its sole purpose was to declare to the several State- that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction."

The principle decided in these cases has been followed in numerous subsequent decisions of the Federal Supreme Court. Under the terms of this act, a citizen of any State of the Union who is a resident of this State and has been a licensed insurance agent of this State for at least two years may obtain a broker's license; on the other hand,
a citizen of this State, who is not a resident of the State and
26 has not been a licensed insurance agent of this State for two years, may not be licensed. No discrimination is made on account of citizenship. It rests alone on residence in the State and experience in the business.

Citizenship and residence are not the same thing, nor does one include the other. Cummings v. Wingo, 31 S. C. 427, 435, 10 S. E. 107, and authorities cited. But our conclusion is not rested upon the mere use of the word "residents;" for no doubt it might appear from the purpose and scope of an act that "residents" was used in the sense of "citizens." If so, the Court would so construe it; and in no event would the Court sanction an evasion of the purpose and intent of this wise and wholesome provision of the Constitu-

tion based on mere verbiage. But there is nothing in the act to suggest any such intention. On the contrary, the words "residents" and "citizens" are both used, each apparently in its ordinary legal sense, which is well defined and understood, making a distinction which is substantial in its purpose and one that is sanctioned by the highest judicial authority.

For the reasons above stated, the petition is dismissed.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk of the Supreme Court of S. C.

27 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

PHILIP LA TOURETTE, Petitioner,

vs.

FITZ HUGH MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Original Jurisdiction.

John L. McLaurin and R. H. Welch, Attorneys for Petitioner.
Thos. H. Peeples and W. H. Townsend, Attorneys for Respondent.

Judgment.

For the reasons above stated, the petition is dismissed.

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A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk of the Supreme Court of S. C.

28 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1915.

Before His Honor Associate Justice R. C. Watts.

PHILIP LA TOURETTE, Petitioner,

against

FITZ HUGH MCMASTER, as Insurance Commissioner of the State of South Carolina, Respondent.

Appeal from Fifth Circuit, Richland County.

Case and Exceptions.

Petition.

To the Honorable the Supreme Court of the State of South Carolina:

The petition of Philip La Tourette respectfully shows:

I. That your petitioner is a bona fide resident and citizen of the State of New York of the United States of America, and as such is licensed as an insurance broker in the State of New York under the laws of said State, and has been so for many years past.

II. That the respondent, Fitz Hugh McMaster, is now, and was during the times hereinafter mentioned, Insurance Commissioner of the State of South Carolina, duly elected and commissioned in accordance with the provisions of an Act of the General Assembly of the State of South Carolina entitled, "An Act to establish the
29 Insurance Department of South Carolina, and to provide for the conduct of the same," approved the 24th day of March, 1908, and other Acts subsequent and amendatory thereof.

III. That in and by the provisions of said Act of March 24th, 1908, there is established a distinct and separate department of State government, known as the Insurance Department, charged with the enforcement and execution of the laws now in existence, or thereafter passed relating to insurance, of which the respondent is in charge.

IV. That the 1916 session of the General Assembly of the State of South Carolina an Act entitled "An Act to provide for the Licensing of Insurance Brokers" was passed and approved on the 2nd day of March, 1916. Section 2 of said Act is as follows:

"Sec. 2. Insurance brokers may be licensed by the Insurance Commissioner upon the following terms and conditions, to-wit: (*a*) The payment of annual Insurance Department license fee of twenty five dollars ($25.00); (*b*) the filing of a bond approved by the Insurance Commissioner, in the sum of Five thousand dollars ($5,000), for the faithful discharge of his duties: (*c*) the payment of an additional license fee of 4 per cent upon the premiums paid or written in the policies of companies not licensed in this State. Such license shall entitle the holder to solicit insurance in any county of this

State, but nothing herein shall prevent municipalities from imposing license fees in accordance with their ordinances. Under the terms of this Act only such persons may be licensed as are residents of this State and have been licensed insurance agents of this State for at least two years."

V. That thereafter, and within the last few days, the petitioner filed with the said Insurance Commissioner, as provided in Section 2, his application for a license as Insurance Broker in the State of South Carolina, offering and agreeing to comply with all the conditions and requirements of said last mentioned Act, and actually filing with the said Insurance Commissioner Twenty five ($25.00) Dollars, and his bond for Five thousand ($5,000) Dollars, as required by the said section of said Act.

30 VI. That the said Insurance Commissioner, the respondent herein, has declined and refused to issue to the petitioner herein a license to do business as an Insurance Broker in this State, and assigned for such act on his part the reason, and no other, that the petitioner is not a resident of the State of South Carolina, though the Commissioner admits that he is a bona fide resident and citizen of the said State of New York, and comes within all respects, except for the fact that he is a non-resident, the terms of said law, as well as being a well informed insurance broker licensed in the State of New York under its laws for many years, all of which will appear by reference to the following letter of the Insurance Commissioner to John L. McLaurin, State Warehouse Commissioner, through and by whom the said application together with the said fee of Twenty five ($25.00) Dollars and the bond for Five thousand ($5,000) Dollars were filed with the respondent as before alleged. This letter is as follows:

"COLUMBIA, S. C., May 10, 1916.

Mr. John L. McLaurin, State Warehouse Commissioner, Columbia, S. C.

DEAR SIR: Replying to your recent letter on behalf of application of Mr. Philip La Tourette, who applied for a broker's license, sending therewith his check for $25 and his bond in the sum of $5,000, I have to say that under the instructions of the Attorney General that I should follow the directions of the statute as to whom I should license, and advising me that I should decline license on the sole ground that Mr. La Tourette is a non-resident of the State, if no other ground exist, and that in case of contest, he, the Attorney General, would represent this office and present arguments to the Court to sustain the law prescribed by the Legislature, I have to decline to issue a license to Mr. La Tourette on the ground that he is a non-resident of the State.

In all other respects I find that Mr. La Tourette comes within the terms of the law in that he is a well-informed insurance

31 broker, licensed as I understand in the State of New York for many years. He has filed the required bond and in all other particulars fulfills the conditions of the law. I realize too that it is possible that Mr. La Tourette might do considerable towards reliev-

ing the present insurance situation in South Carolina as suggested by yourself, but I have no option in the matter and as indicated above, on the ground that he is a non-resident of the State, as is prescribed in the last sentence of Section 2 of the Act providing for the licensing of insurance brokers, I decline to issue the license and am returning herewith Mr. La Tourette's check for $25.00 and his bond in the sum of $5,000.

Will you be good enough to hand to La Tourette his check and his bond.

Yours very truly,

F. H. McMASTER,
Insurance Commissioner."

VII. That the respondent assigned, in his refusal to issue the license, the reason, and no other reason, that the petitioner was and is a non-resident of this State, basing his action upon the concluding sentence of Sec. 2, above quoted, wherein it is provided, "Under the terms of this Act only such persons may be licensed as are residents of this State and have been licensed insurance agents of this State for at least two years.

VIII. That the action of the Insurance Commissioner in declining and refusing to issue a license to the petitioner is wrong and unlawful in that, being a bona fide citizen and resident of the said State of New York, he is thus denied the privileges and immunities of a citizen of the State of South Carolina, contrary to the provisions of Sec. 2 of Article 4 of the Constitution of the United States of America, the first paragraph of which is as follows: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States;" and such action on the part of the respondent is further unlawful and wrongful in that it is contrary to that part of the provisions of the fourteenth amendment to the Federal Constitution, reading as follows: "No State shall make
32 or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." The said action is further unlawful and wrong in that it violates the provisions of Section 5, Article I of the Constitution of the State of South Carolina, which is as follows: "The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

IX. That the part quoted in paragraph III from Sec. 2 of the Act is unconstitutional, null and void, in that it is in conflict with Sec. 2 of Article IV and the fourteenth amendment of the Federal Constitution, and Section 5 of Article I of the Constitution of South Carolina.

X. That the petitioner is entitled under the law to have the Insurance Commissioner of this State issue to him an insurance broker's

license as provided for in Sec. 2 of the Act of 1916, above quoted, he on his part having complied with all the requirements thereof, except as to that part contained in the last sentence of Sec. 2, above quoted, which as alleged, is unconstitutional, null and void, for the reasons before assigned.

XI. That the action of the Insurance Commissioner in declining and refusing to issue to him a license to do business as an insurance broker in this State is wrong and unlawful, in that it denies
33 to him his rights which, as a citizen of the State of New York and of the United States, are guaranteed to him by the highest law of the land.

Wherefore the petitioner respectfully prays this Court to require and order the respondent to forthwith issue to him the license provided for in Sec. 2 of the Act of 1916, and he will ever pray, etc.

JOHN L. McLAURIN,
R. H. WELCH,
Attorneys for Petitioner.

34 *Rule to Show Cause.*

Upon hearing read the verified petition herein and after consideration of the same it is upon the motion of John L. McLaurin and R. H. Welch, attorneys for the petitioner, ordered:

That the respondent, Fitz Hugh McMaster, Insurance Commissioner of the State of South Carolina, do show cause, if any he has, before the Supreme Court of this State on the 22nd day of May, 1916, at 10 o'clock A. M. why the prayer of the petitioner herein should not be granted.

That a copy of this order, together with the petition herein, be forthwith served upon the respondent.

EUGENE B. GARY,
Chief Justice of the State of S. C.

Columbia, S. C., May 11th, 1916.

35 *Demurrer.*

The respondent, F. H. McMaster, Insurance Commissioner of the State of South Carolina, appearing in response to the order to show cause, served upon him in the above entitled action, why the writ should not be granted, respectfully shows, and demurs to the complaint in the above entitled action, upon the ground that it does not state facts sufficient to constitute a cause of action, or to authorize the issuance of the writ prayed for in that

(*a*) It is within the proper exercise of the police power of the State to require that persons acting as insurance brokers within the State shall be residents of the State and licensed by it to transact such business in order that the business may be in the hands of trustworthy persons.

(*b*) The business of fire insurance is so affected with the public interest as to justify the State in the exercise of its police power to require the business of insurance brokerage to be exercised only by residents of the State.

(*c*) That confining the exercise of the business of insurance brokers to residents of the State is not a deprivation of any of the privileges or immunities secured to citizens of other States by the Constitution of the United States.

(*d*) The provisions of the Act of the Legislature directing to whom license to do business as insurance brokers within the State shall be issued, makes no discrimination against citizens of any other State as such. The requirement that such brokers be
36 residents of this State applies as well to citizens of this State as citizens of other States, residence and citizenship being entirely different things.

(*e*) The right to carry on the business of an insurance broker is not among the fundamental right- belonging to the individual as a citizen of the State.

Wherefore, the defendant prays that the writ prayed for may be refused and the complaint dismissed.

THOS. H. PEEPLES,
Attorney General, Attorney for Respondent.
W. H. TOWNSEND,
Of Counsel.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk of the Supreme Court.

37 Endorsed on cover: File No. 9397. South Carolina Supreme Court. Term No. —. Philip La Tourette, Petitioner in error, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina, Respondent in error. Filed June 27th, 1916.

Endorsed on cover: File No. 25,736. South Carolina Supreme Court. Term No. 906. Philip La Tourette, plaintiff in error, vs. Fitz Hugh McMaster, as Insurance Commissioner of the State of South Carolina. Filed January 31st, 1917. File No. 25,736.

-10-

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 114.

PHILIP LA TOURETTE, PLAINTIFF IN ERROR,

vs.

FITZ HUGH McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN L. McLAURIN,
R. H. WELCH,
Attorneys for Plaintiff in Error.

WENDELL P. BARKER,
Of Counsel.

(25,736)

INDEX.

Cases Cited.

SUPREME COURT OF THE UNITED STATES.

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vs.

FITZ HUGH McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

Statement.

The judgment under review denied the plaintiff's petition for a writ of mandamus directing the respondent, as Insurance Commissioner of the State of South Carolina, to issue to the plaintiff a license as an insurance broker. The sole ground upon which the Insurance Commissioner refused to issue such a license to petitioner was that the petitioner is a non-resident of the State of South Carolina. At the time of such refusal, the Insurance Commissioner said: "In all other respects I find that Mr. La Tourette (petitioner) comes within the terms of the law, in that he is a well-informed insurance broker, licensed, as I understand, in the

State of New York for many years. He has filed the required bond and in all other particulars fulfills the conditions of the law. I realize, too, that it is possible that Mr. La Tourette might do considerable toward relieving the present insurance situation in South Carolina, as suggested by yourself, but I have no option in the matter, and, as indicated above, on the ground that he is a non-resident of the State, as is prescribed in the last sentence of section 2 of the act providing for the licensing of insurance brokers, I decline to issue a license and am returning herewith Mr. La Tourette's check for $25.00 and his bond in the sum of $5,000" (fol. 31).

Assignment of Errors.

And, now comes Philip La Tourette, petitioner in error, and makes and files this his assignment of errors.

1.

The Supreme Court of the State of South Carolina erred in holding and deciding that so much of the act of the General Assembly of the State of South Carolina approved the 2d day of March, 1916, entitled, "An act to provide for the licensing of insurance broker," as contained in section 2 thereof, that provided for the granting and issuing of a license to do and engage in the business of insurance broker only to residents of the said State that have been licensed insurance agents of the State for at least two years was constitutional.

2.

The Supreme Court of the State of South Carolina erred in not holding so much of said act as contained in section 2 thereof, which limits the issuing of an insurance broker's

license only to a resident of the State of South Carolina, did not deny to the petitioner, Philip La Tourette, the privileges and immunities guaranteed to him in the State of South Carolina by the Federal Constitution as well as the Constitution of the State of South Carolina.

3.

The Supreme Court of the State of South Carolina erred in not holding that so much of said act as contained in section 2, which limits the issuing of said license only to residents of the State who have been licensed insurance agents in the State for at least two years, deprived the petitioner, Philip La Tourette, of liberty and property without due process of law, and was denied to him the equal protection of the law, as provided in the Constitution of the United States and in the Constitution of the State of South Carolina.

4.

The Supreme Court of the State of South Carolina erred in not holding that so much of said act as contained in section 2 thereof, which limits the issuance of a license to engage in the business of an insurance broker in said State only to residents of the same who have been licensed insurance agents therein for two years, was unconstitutional, because in conflict with the Constitution of the United States and of the Constitution of South Carolina, in that (*a*) the petitioner, Philip La Tourette, a *bona fide* resident of the State of New York, is denied the privileges and immunities granted to the citizens and residents of the State of South Carolina, (*b*) the petitioner, Philip La Tourette, is thereby deprived of his liberty and property in the State of South Carolina, (*c*) and the petitioner, Philip La Tourette, is denied the equal protection of the laws of South Carolina.

5.

The Supreme Court of the State of South Carolina erred in not granting the prayer of the petitioner and in not ordering the respondent, Fitz Hugh McMaster, the Insurance Commissioner of the State of South Carolina, to issue to him a license to do and engage in the business of an insurance broker in the State of South Carolina under the terms of said act approved the 2d day of March, 1916, the said Philip La Tourette having complied with every provision of said act except that part of section 2 which conditioned the granting and issuing of a license only to residents of the State of South Carolina who have been licensed as insurance agents in this State for at least two years (No. 906, pp. 7-9).

The Argument of Petitioner.

The object of these proceedings is to compel the Insurance Commissioner, the respondent herein, to issue to the petitioner an insurance broker's license, as provided for by an act of the General Assembly of this State, approved the 2d day of March, 1916. Section 1 of the act is as follows:

> "Section 1. The term insurance broker as used in this act, is declared to be such person as shall be licensed by the Insurance Commissioner to represent citizens of this State for the placing of insurance in insurers licensed in this State or in any other State or country."

In Hooper *vs.* State of California, 155 U. S., 647, at page 657, the business of an insurance broker is described as follows:

> "The business of a broker is to serve as a connecting link between the party who is to be insured and the party who is to do the insuring—to bring about the 'meeting of their minds' which is necessary to the consummation of the contract. In the discharge of his business he is the representative of both parties to a certain extent."

And on page 661 the business of Johnson & Higgins, insurance brokers (Hooper's Principles), is described as follows:

> "Johnson & Higgins are pursuing one of the ordinary callings of life in the City of New York. It is a lawful calling, as much as that of a merchant, grocer, manufacturer, tailor or shoemaker. It cannot properly be characterized as in itself, or by the necessary results of the business, hurtful to the community. They have as much right to pursue their calling in California by agent as they have to pursue it in New York."

There is a clearly marked distinction between an insurance broker and an insurance agent that is fundamental and recognized generally. The broker represents the insured, while the latter is the employee of the insurer, authorized to bind the insurer in the issuance and modification of the insurance contract. The following definition is given in A. & E. Encyclopedia of Law, volume 16, page 970, as follows:

> "An insurance broker is one who acts as a middleman between the insured and the insurer, and who solicits insurance from the public, under no employment from any special company, placing the orders secured either with companies selected by the insured, or, in the absence of such selection, with the companies selected by himself.
>
> "Distinguished from Insurance Agents.—There is a marked and well-defined distinction between insurance brokers and insurance agents representing corporations. Such insurance agents during their employment sustain a fixed and permanent relation to the companies they represent. They are clothed with general powers and authority and assume responsibilities not conferred upon or assumed by brokers. They owe duty and allegiance to the companies employing them and seek patronage only for the profit and benefit of such companies, and are precluded from soliciting insurance business for others."

It will be seen from these definitions that the occupation of the insurance broker is as much a trade or business as that of an insurance agent; the one, as stated, represents a company that writes the insurance, while the other represents the person desiring to be insured.

Section 2 of the act in question is as follows:

> "Insurance brokers may be licensed by the Insurance Commissioner upon the following terms and conditions, to-wit: (*a*) The payment of an annual Insurance Department license fee of twenty-five ($25.00) dollars; (*b*) the filing of a bond approved by the Insurance Commissioner, in the sum of five thousand ($5,000) dollars for the faithful discharge of his duties; (*c*) the payment of an additional license fee of 4 per cent upon the premiums paid or written in the policies of companies not licensed in this State. Such license shall entitle the holder to solicit insurance in any county of this State, but nothing herein shall prevent municipalities from imposing license fees in accordance with their ordinances. *Under the terms of this act only such persons may be licenses as are residents of this State and have been licensed insurance agents of this State for at least two years.*" (*Italics ours.*)

It is clear, from a mere reading of sections 1 and 2, that the State recognizes the business of an insurance broker as a legitimate trade or occupation. Section 1 is particular to define what this business or trade or occupation is, while section 2 provides specifically for the licensing of this business, trade or occupation. The act is evidently an attempted TRADE REGULATION, and in the exercise of this power the State has recognized this business, trade or occupation as legitimate and proper. The State does not say that the business of an insurance broker is against either the morals, health or welfare of the citizens of this State.

After thus specifically recognizing the business, trade or occupation of an insurance broker as proper and legitimate,

subject to the rules and regulations therein provided, the State seeks, by the concluding sentence of section 2, to prohibit the licensing of any person other than a resident of this State.

It is contended by the petitioner that the State has attempted to deny to him, a *bona fide* citizen and resident of the State of New York, privileges and immunities which are granted to the citizens of this State (*i. e.* South Carolina); that the State has undertaken to abridge the privileges and immunities granted to him as a *bona fide* citizen of the State of New York; that the State has undertaken to deprive him of liberty and property without due process of law, and has denied to him the equal protection of the law.

POINT I.

The provision of the statute limiting the granting of a license to residents of the State is void as contrary to Section 2 of Article 4 of the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States and to Section 5 of Article 1 of the Constitution of the State of South Carolina.

Section 2 of article 4 of the Constitution of the United States is as follows:

> "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

The Fourteenth Amendment to the Constitution of the United States provides:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Section 5 of article 1 of the Constitution of South Carolina is as follows:

> "The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be denied of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the law."

The question, therefore, is: Can the State of South Carolina recognize the business, trade or occupation of the insurance broker as proper and legitimate and then confine the granting of a license to engage in this trade, business or occupation to the residents of the State of South Carolina, and deny the same right to a *bona fide* resident of another State, solely and only on the ground of such non-residence? To put it differently: Is not the limiting of the right to obtain this license to the residents of this State an abridgment and denial of the rights of the citizens of other States to the privileges and immunities granted to them by the Constitution of the United Staues and the State of South Carolina? Or still differently — can the legislature of the State of South Carolina prohibit an individual citizen of another State from acting as an insurance broker in the State of South Carolina? For instance, if a man resides across the State line in an adjoining State and maintains an office in that State where he transacts his business each day, and desires to pursue his business in the State of South Carolina, can the State of South Carolina deny to him the privilege of so extending his business into that State, when said broker is willing and able to comply with all the terms and regulations of the statute except that as to residence?

It is not contended that the privileges and immunities to which the citizens of the several States are entitled in every other State are the privileges and immunities granted to them by their home State. A citizen coming into South Carolina

from another State, who remains a citizen of such other State, cannot bring with him privileges and immunities given to him by the laws of his own State, but the privileges and immunities to which he is entitled are such as are granted to him by the laws of the State to which he comes, and must be the same as are granted to the citizens of such State. As an individual, he must have all the civil rights that the individuals of the State to which he comes may have. This thought is forcibly expressed by Judge Marshall in the case of Commonwealth *vs.* Milton, 51 Ky., 212, vol. 12 Monroe L. & E. Reports, 212.

This case is an able discussion of the provisions of the second section of the fourth article of the Federal Constitution. In the course of the opinion the court said (at page 219):

> "The Constitution certainly intended to secure to every citizen of every State the right of traversing at will the territory of any and every other State, subject only to the laws applicable to its own citizens, of exercising there, freely but innocently, all of his faculties, of acquiring, holding, and alienating property as citizens might do, and of enjoying all other privileges and immunities common to the citizens of any State in which he might be present, or in which without being present he might transact business. But in securing these rights it does not exempt him from any condition which the law of the State imposes upon its own citizens, nor confer upon him any privilege which the law gives to particular persons for special purposes or upon prescribed conditions, nor secure to him the same privileges to which by the laws of his own State he may have been entitled."

And, quoting Judge Washington in the case of *Corfield vs. Coryell*, 4 Wash. C. C. Repts., 380, Judge Marshall says (at page 219):

> "Judge Washington characterizes the privileges and immunities secured by this clause as being such as are 'In their nature fundamental, which belong of

> right to the citizens of all free governments and which have at all times been enjoyed by the several States which compose this Union, from the time of their becoming free, independent, and sovereign.' We suppose the same idea is conveyed when we say that they are such privileges and immunities as are common to the citizens of any State under its constitution and constitutional laws."

And again, at page 221:

> "But the most absolute recognition or guarantee to the citizens of each State of all privileges and immunities of citizens in the several States, if limited as its terms import, to individual citizens as natural persons, and if restricted at all, must allow it to be, to such privileges and immunities as are fundamental, and therefore presumably common to the citizens of every State in their natural capacities, implies no concession by or in one State to the laws of any other State, and imparts no extra territorial vigor to the laws of any State. It is rather a concession to the natural faculties and rights of individuals to the law of nature from which they are derived, and to the principles of benevolence and equality, the prevalence of which marks the advance of civilization and refinement. It is a concession, too, which, while in point of congruity, it is due to all individuals who are citizens of the same government, is in no respect inconsistent with the character and objects of the instrument by which that government is created, or with the principles on which the Government and the Union are based."

If we should rest alone upon this opinion of Judge Marshall, it would seem that it would be difficult to hold that the Insurance Commissioner would have the right to refuse a license to a broker to transact a brokerage business for no reason other than that the broker was a citizen or resident of some State other than the State of South Carolina. If he

should do so, it would seem that he was denying a citizen of another State rights which are guaranteed to him by the fundamental laws of our nation, because he has the right "of enjoying all other privileges and immunities common to the citizens of any State in which he might be present, or in which, without being present, he might transact business."

What the fundamental rights are which are guaranteed to the citizens of every State while present in a State other than that of which they are *bona fide* residents are difficult to enumerate. We find in almost every instance the courts prefer not to describe and define them in general classification, but to decide each case as it may arise. The courts have held that it means equal protection by the Government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject to such restraints as the State may justly prescribe for the general good of its own citizens.

One of the most far-reaching opinions dealing with the question under consideration is the opinion in the Slaughter House Cases, decided by the Supreme Court in 1872, and reported in 83 United States, page 36. It was in this case that a distinction was drawn between the citizenship of the United States and citizenship of a State. In this case the court quotes from the opinion of Judge Washington, *supra*, defining what is meant by privileges and immunities of citizens of the several States. In part, the language quoted is as follows, at page 97:

> "They might all, however, be comprehended under the following general heads: Protection by the Government, enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject, nevertheless, to such restraints as the Government may prescribe for the general good of the whole."

This language of Judge Washington has been so often quoted that it may be regarded as an authoritative general definition of what is meant by the second section of article four of the Federal Constitution. It will be thus seen that the courts of our nation, State and Federal, have settled the question conclusively that one of the priviliges and immunities which the citizens of every State have in every other State is the right "to pursue and obtain happiness and safety."

We will here depart for the moment from further reference to the Slaughter House Cases to show by the decision of the Supreme Court in the case of Butchers' Union *vs.* Crescent City, 111 United States, 746, what is meant by the right "to pursue and obtain happiness and safety." In that case the court said (at page 757):

> "Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment. The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex and condition is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright."

If the citizen of any State is guaranteed the same privileges and immunities of the citizens of every other State, and if he has the right to pursue his happiness in any State where he may go, and the right to pursue happiness means

the right to pursue any lawful business or vocation in any manner not inconsistent with the equal rights of others, it is submitted that it is not possible for the Insurance Commissioners of the State of South Carolina to deprive a citizen of another State of the right to follow his common business and calling of life by denying him a license to act as an insurance broker in the State of South Carolina.

Referring again to the Slaughter House Cases, wherein it is stated at page 77:

> "Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more or less, shall be the measure of the rights of citizens of other States within your jurisdiction."

In Ward *vs.* State of Maryland, 79 U. S., 418; 12 Wallace, 401, the court held the statute of the State which prohibits the sale within a certain district of the State of goods other than agricultural products and articles manufactured in the State by persons not residents in the State, without first obtaining a license and paying therefor, is unconstitutional.

The court, at page 418, says:

> "The plaintiff in error was indicted in the Criminal Court of Baltimore for violating the statute of Maryland by selling by sample, in the City of Baltimore, certain articles of merchandise without obtaining a license so to do, he not being a permanent resident of the State of Maryland."

And at page 424:

> "Ward, the defendant, is a citizen of New Jersey, and not a permanent resident of Maryland, and the record shows that he, on the day therein named, at a place within a prohibited district, sold to the person therein named 'by specimen, to wit, by sample,'

> certain goods other than agricultural products or articles manufactured in the State without first obtaining a license so to do, and that he was indicted for these acts in the proper criminal court and was arraigned therein and pleaded not guilty to the indictment."

The statute having been declared by the said State courts constitutional, the defendant sued out a writ of error and removed the record into this court for re-examination.

The court, at page 425, said:

> "Congress possesses the power to regulate commerce among the several States as well as commerce with foreign nations, and the Constitution also provides that citizens of each State shall be entitled to all privileges and immunities in the several States, and that defendant contends that the statute of the State under consideration in its practical operation, is repugnant to both of these provisions of the Constitution, as it either works a complete prohibition of all commerce from other States in goods to be sold by sample within the limits of the described States, or at least creates an unjust and onerous discrimination in favor of the citizens of the State enacting the statute in respect to an extensive and otherwise lucrative branch of interstate commerce by securing to the citizens of that State, if not the exclusive control of the market, very important special privileges and immunities, by exempting from burdensome requirements, and onerous exactions imposed upon the citizens of other States desirous of engaging in the same mercantile pursuits in that district."

And at page 429:

> "Attempt will not be made to define the words 'privileges and immunities' or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistak-

> ably secures and protects the right of a citizen of one State to pass into any other State of the union for the purpose of engaging in lawful commerce, trade or business, without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State; and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens."

And at page 432:

> "Viewed in either light, the court is of the opinion that the statute in question imposes a discriminating tax upon all persons trading in the manner described in the district mentioned in the indictment who are not permanent residents in the State, and that the statute is repugnant to the Federal Constitution and invalid for that reason."

So also see Watson, 15 Fed., 511, where it was held that a State statute requiring all persons engaged in peddling to procure a license for the privilege of selling their goods within the State, and further provides that no person shall be licensed as a peddler who has not resided in the State one year next preceding his application for a license, thereby discriminating against non-residents, is in violation of that clause of the Constitution which secures to citizens of each State all the privileges and immunities of citizens in the several States, the court, at page 512, says:

> "The relator is not prosecuted for peddling within the State when not a resident, but for peddling within the State without a license; and as a resident of the State so peddling like wares would be liable to similar prosecution, it is argued that there is no discrimination against his citizenship by this prosecution, and that to the extent of upholding the prosecution the statute is constitutional and valid, although beyond that it may not be; that he could not be prosecuted for selling without a license if he had a license, and that to avoid such a prosecution he should pay for

> and obtain a license as a resident of the State would. This argument would be better founded if there was any mode provided by which he could obtain such a license. But not only is no such mode provided, but, further, his obtaining one is expressly prohibited. It is said that it is this prohibition which makes the discrimination, and that the prohibition only is not constitutional. The offense is peddling without a license. Without the provisions requiring a license there could be no wrongful lack of a license, and no offense resting in the want of one. These provisions exclude non-residents, and there can be no wrongful lack of a license as to them. These provisions all stand together to make up the offense, and the part discriminating against the relator cannot be taken away, and leave enough to make him guilty of the offense prosecuted for. The statute says to him that he shall not peddle without a license, and shall not have a license. This is equivalent to saying to him that he shall not peddle at all. It is not even claimed on behalf of the State that such a direct provision could be upheld."

It may be that writing insurance is not commerce within the meaning of the Constitution of the United States, but a broker who maintains an office and solicits business and looks after and manages the affairs of his business in the State of South Carolina is certainly engaged in business, and if he is engaged in business he cannot be deprived of that right by the laws of the State because he is a citizen of another State.

In the case of Cole *vs.* Cunningham, 133 United States, 107, at page 114, in discussing section 2 of article 4 of the Federal Constitution, the court again said:

> "The intention of section 2 of article 4, was to confer on the citizens of the several States a general citizenship and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances, and this includes the right to institute actions."

One of the best considered recent cases dealing with the question under consideration is the case of Blake *vs.* McClung, 172 United States, 239. The leading cases on the question are there reviewed and the doctrine previously announced adhered to. The statute under discussion in that case was one which forbade the State courts to recognize the right in equity of citizens residing in other States to participate upon terms of equality with citizens of that State in the distribution of the estates of an insolvent foreign corporation lawfully doing business in the State. The court said at page 254:

> "We hold such discrimination against citizens of other States to be repugnant to the Second Section of the Fourth Article of the Constitution of the United States, although, generally speaking, the State has the power to prescribe the conditions upon which foreign corporation may enter its territory for purposes of business. Such a power cannot be exerted with the effect of defeating or impairing rights secured to citizens of the several States by the supreme law of the land. Indeed, all the powers possessed by a State must be exercised consistently with the privileges and immunities granted or protected by the Constitution of the United States."

The court then proceeds to make an exception, which is recognized by all the decisions touching upon the particular question. It is this at page 256:

> "We must not be understood as saying that a citizen of one State is entitled to enjoy in another State every privilege that may be given in the latter to its own citizens. There are privileges that may be accorded by a State to its own people in which citizens of other States may not participate except in conformity to such reasonable regulations as may be established by the State."

The court then mentions an exception, in that while the State cannot forbid citizens of another State from instituting

suits in its courts, it may require the citizen of another State to give bond for costs, although such bond is not required of residents. The right of suffrage is mentioned as another exception, in that a State may require a citizen of another State to reside within the State for a certain length of time before such citizen may exercise the right of suffrage. The court then continued (at page 256):

> "The Constitution forbids only such legislation affecting citizens of the respective States as will substantially or practically put a citizen of one State in a condition of alienage when he is within or when he removes to another State, or when asserting in another State the rights that commonly appertain to those who are part of the political community known as the people of the United States, by and for whom the government of the union was ordained and established."

We might multiply the number of cases cited, but those from which we have quoted are sufficient to show that the rule is uniform and has been adhered to from the foundation of our Government to the present time. As said in the Slaughter House Cases, the words "privileges and immunities" in our constitutional history are to be first found in the fourth article of the old confederation. The guaranty in the confederation is in the following language (at page 75):

> "That, the better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States, and the people of each State shall have free ingress and egress to and from any other State and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively."

After quoting the second section of the fourth article of the Constitution the court then said:

> "There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each."

That the attempt to prohibit the Insurance Commissioner from issuing a broker's license to the petitioner, who is a citizen of another State, notwithstanding he may comply with the laws of this State, is not a police regulation, but a trade regulation. I refer to the case of Sayre Borough *vs.* Phillips, 148 Pennsylvania State, 482; 33 American State Reports, 842. This borough had enacted an ordinance, the effect of which was to authorize a license to peddle to be issued only to residents of the borough. The act was declared void. The court said (at page 488):

> "An ordinance prohibiting the business of peddling within the municipal limits, without a license from the proper municipal officer, would seem to be as clearly justified by the police power as a statute prohibiting the same business throughout the Commonwealth. But it is very clear that a police regulation must be directed against the business or practice that is harmful, not against one or some of the persons who may be engaged in it."

Continuing the court said (at page 489):

> "A law that should prohibit all persons peddling goods manufactured or produced in other States and permit the same persons to peddle goods of the same character manufactured or produced in this State would be a trade regulation discriminating between the productions of this and sister States, and would be incapable of enforcement, because in violation of the Constitution of the United States. So a law that should forbid the court to grant a peddler's license to any person resident in any other State, but should authorize the granting of licenses to citizens of this State, would be bad for the same reason."

It would seem that the language of the court just quoted is probably more directly in point than any case cited. If a State does not have the right to pass a law forbidding the issuance of license to a man who desires to peddle, because he is a citizen of another State, it could hardly be argued that it would have the right to pass a law forbidding the issuance of a license to a man who desires to act as an insurance broker, because he is a citizen of another State.

Further commenting upon the ordinance which excepted from its provisions the citizens of the borough, the court said (at said page 489):

> "The proviso converts the police regulation into a trade regulation. The ordinance, taken as a whole, does not prohibit an injurious business but injurious competition. That the resident dealer and peddler may enjoy a large trade, the non-resident peddler is shut out. If the borough authorities may lawfully regulate the business of peddling for the benefit of the residents, we see no reason why they may not lay their hands in like manner on every department of trade and of professional labor and protect the village lawyer and doctor as well as the village grocer and peddler."

To the same effect are:

State *vs.* Montgomery, 94 Maine, 192; 80 American State Reports, 386.

Simrall & Company *vs.* City of Covington, 90 Kentucky, 444.

Broth *vs.* Lloyd, 33 Federal Reporter, 593.

Robbins *vs.* Taxing District of Shelby County, Tennessee, 120 U. S., 489.

Judge Cooley on Constitutional Limitations, seventh edition, page 567, states:

> "The Constitution of the United States contains provisions which are important in this connection. One of these is, that the citizens of each State shall

be entitled to all the privileges and immunities of citizens of the several States, and all persons born or naturalized in the United States, and subject to its jurisdiction, are declared to be citizens thereof, and of the State wherein they reside. The States are also forbidden to make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, or to deprive any person of life, liberty or property, without due process of law, or to deny to any person within their jurisdiction the equal protection of the laws. *Although the precise meaning of 'privileges and immunities' is not very conclusively settled as yet it appears to be conceded that the Constitution secures in each State to the citizens of all other States the right to remove to, and carry on business therein;* the right by the usual modes to acquire and hold property, and to protect and defend the same in the law; the right to be exempt, in property and person, from taxes or burdens which the property, or persons, of citizens of the same State are not subject to. To this extent, at least, discriminations could not be made by State Laws against them." (Italics ours.)

It will be noted here that Judge Cooley specifically mentions the right "to carry on any business therein" as falling within the "privileges and immunities" guaranteed to the citizens of one State in each and every of the other States.

The attention of the court is also called to the case of the City of Laurens *vs.* Anderson, 75 S. C., 62, which is a South Carolina decision, the same State in which the statute questioned was enacted. In this case the doctrine which we contend for was recognized and followed by this court. The General Assembly several years ago passed an act found now in 24 Stat., 441, the object of which was to exempt all soldiers and sailors of the Confederate States who enlisted from this State from any license for the carrying on of any business or profession in this State or in any village or town therein. The defendant, Anderson, was tried in the may-

or's court of Laurens upon the charge of running a beef market and grocery store without a license. He pleaded that he was exempt from the payment of a license tax under the provisions of this act. The mayor ruled that the statute was unconstitutional, and imposed a sentence upon him, from which an appeal was taken to the circuit court, and the position of the mayor was sustained, and on an appeal to this court this ruling was sustained, the court saying, (on page 68):

> "The statute hereinbefore set out shows, upon its face, that it denies to those not included within its provisions the equal protection of the laws. It provides only for soldiers and sailors who enlisted from this State and were honorably discharged, but ignores the veterans of other wars, *as well as those soldiers and sailors of the Confederacy who enlisted from other States and were honorably discharged.* In fine, there is not a single feature of the Act upon which a classification can be based, without violating the provisions of the State and Federal Constitutions." (Italics ours.)

The significant part of the language of the court is the recognition of the failure of this statute to extend the exemption to *"those soldiers and sailors of the Confederacy who enlisted from other States and were honorably discharged."* The manifest purpose and object of this statute was to confine this exemption to the soldiers and sailors of the Confederate States who enlisted from this State, and to exclude from this exemption soldiers and sailors who enlisted from other States. The court concluded its decision with these strong words: "In fine, there is not a single feature of the act upon which a classification can be based without violating the provisions of the State and Federal Constitutions." The provisions of the Federal Constitution that was before the court were the very sections which are here now. If the General Assembly does not possess the power to limit its

exemption from license to do business in this State to the soldiers and sailors of the Confederacy who enlisted from this State, and to deny this exemption to the same soldiers and sailors who enlisted from other States, how can the General Assembly limit the right to obtain an insurance broker's license to the citizens of this State and deny this right to the citizens and residents of other States? If the old-soldier exemption clause in this statute violated every provision of the State and Federal Constitutions upon this question, how can it be said that the insurance broker's act does not similarly do so, when it undertakes to grant certain privileges to the citizens of this State by denying to the citizens of other States the same privileges?

Another interesting case upon this subject is the case of State *ex rel* Hoadley *vs.* Board of Insurance Commissioners, 37 Fla., 564; 20 S. E. Rep., 772; 33 L. R. A., 290, which we consider directly in point, save only the legislation in that case was only discriminatory in favor of the citizens of Florida, while in this case it is prohibitory against the citizens of other States. Both are concerning insurance, and affects the rights of the citizens and residents of other States to do business in the legislating State upon the same footing with the citizens and residents of the same. The Florida case sought to compel the board of insurance commissioners to issue a certificate of authority to do an insurance business in that State. The opinion of the court states the facts as follows:

> "Section 3 of the Act of 1895 clearly requires that before any company, association, firm or individual not of this State shall transact any business of insurance in this State, it, or he, must be possessed of at least $150,000 in value, invested in the United States or State bonds, or other bankable, interest-bearing stock issued in the United States, at their market value, and we do not see that any such requirement is made of companies, associations, firms or individ-

uals in this State doing a little business here. Insurance companies incorporated under our laws are entitled to the certificate upon satisfactory showing of the possession and investment of at least $25,000 in the United States or State bonds, or other bankable stocks or securities issued in the United States at their market value, upon a compliance with the other provisions of the Act, and, so far as individuals or incorporated associations of individuals in this State are concerned, we do not see that they are required to show an investment of any amount in the securities in which companies, associations, firms or individuals, not of this State, are required to invest to the extent of $150,000 except in case of life insurance business, when $100,000 must be invested."

Upon this state of facts the court then states the question before it to be and decides it as follows:

"The sole question presented, then, is whether the legislature can prescribe discriminating conditions upon citizens of other States, forcing an insurance business in this State not imposed upon citizens here engaging in the same kind of business? In speaking of the clause in the Federal Constitution already quoted—Article 4, Section 2—it is said in *Paul vs. Virginia*, 75 U. S., 8 Wall., 168. 19 L. ed., 357: 'It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, as far as the advantages resulting from citizenship in those States are concerned. It relieves them from disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States equal protection of their laws.' It is also stated in this opinion that privileges and immunities secured to citizens of each State in the several

States by the Constitution of the United States are those privileges and immunities which are common to the citizens in the latter States under their Constitution and laws by virtue of their being citizens. The doctrine announced in this case as to the inhibition against discriminations by the several States against citizens of other States has been firmly settled by the Federal Supreme Court and often repeated. *Corfield vs. Coryell*, 4 Wash. C. C., 371; *Ward vs. Maryland*, 79 U. S., 12 Wall., 418, 20 L. ed., 449; *Hooper vs. California*, 155 U. S., 648, 39 L. ed., 297; *French vs. People*, 6 Colo. App.—Cooley, Const. Lim., 6th ed., p. 24, and authorities cited in note 4. As shown by the legislation of the State referred to, both resident and non-resident citizens are authorized to do insurance business in this State, and it is too clear to require any argument that a discrimination has been made as to the conditions upon which the business shall be conducted. The extent of the discrimination is not important, the only question is, Does it exist?"

POINT II.

The Opinion of the Supreme Court of the State of South Carolina Discussed.

The court below evidently had in mind the doubtfulness of the validity of the statute questioned, and endeavors to sustain the statute by drawing a fine distinction between a resident of the State and a citizen of the State, as clearly appears from the concluding paragraph of its opinion. It is respectfully submitted that this is purely an evasion.

Looking at the purpose and scope of the statute it is plain that the words, "Only such persons may be licensed as are residents of this State," refer to those who reside in South Carolina or such as intended that their permanent home or

habitation should be there, without any present intention of returning therefrom and having the intention when absent from that State to return thereto. The statute is clearly an attempt to create a monopoly of the business engaged in by insurance brokers in the State of South Carolina for residents of South Carolina, whether citizens of that State or otherwise, by excluding residents or citizens of any other State from pursuing the calling of that of an insurance broker within the State of South Carolina.

In Blake *vs.* McClung, 172 U. S., 239, at page 247, the court said:

> "Looking at the purpose and scope of the Tennessee statute it is plain that the words 'residents of this State' refer to those who reside in Tennessee or such as intended that their permanent home or habitation was there, without any present intention of returning therefrom and having the intention, when absent from that State to return thereto. Such residents as appertaining to or inherent in citizenship and the words in the same article 'residents of any other country or countries' refer to those whose respective habitations were not in Tennessee, but who were citizens, not simply residents of some other State or country. It is impossible to believe that the statute was intended to apply to creditors of whom it could be said that they were only residents of other States, but not to creditors who were citizens of such States. The State did not intend to place creditors citizens of other States upon an equality with creditors citizens of Tennessee, and to give priority only to Tennessee creditors over creditors who resided in but were not citizens of other States. The manifest purpose was to give to all Tennessee creditors priority over all creditors residing out of that State, whether the latter were citizens or only residents of some other State or country. Any other interpretation of the statute would defeat the object for which it was enacted. We must therefore consider whether the statute infringes rights secured to the plaintiff-in-error, citizens of

> Ohio, by the provisions of 2d section of Article IV of the Constitution of the United States, declaring that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

And at page 258:

> "We adjudge that when the general property and assets of a private corporation lawfully doing business in a State are in course of administration by the courts of such State, creditors who are citizens of other states are entitled, under the Constitution of the United States, to stand upon the same plane with creditors of like class who are citizens of such State, and cannot be denied equality of right simply because they do not reside in that State, but are citizens residing in other States of the Union. The individual plaintiffs in error were entitled to contract with this British corporation, lawfully doing business in Tennessee, and deemed and taken to be a corporation of that State; and no rule in the distribution of its assets among creditors could be applied to them as resident citizens of Ohio, and because they were not residents of Tennessee, that was not applied by the courts of Tennessee to creditors of like character who were citizens of Tennessee."

It is respectfully submitted that should the validity of the statute referred to be established the effect would be that it would necessarily create a monopoly in the residents or citizens of the State of South Carolina to the brokerage business in the State and deprive the petitioner, who is not such a citizen or resident of that State, from pursuing his calling or business within the limits of that State.

In Mugler *vs.* Kansas, 123 U. S., 562, at page 661, the court said:

> "There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, Sinking Fund Case, 99 U. S. 718

(25:501), the courts must obey the Constitution rather than the law-making department of the Government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. To what purpose it was stated in Marbury *vs.* Madison, 5 U. S., 1—; Cranch, 137, 167 (2:60, 70). 'Are powers limited and to what purpose is that limitation committed to writing if those limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms nor are they to be misled by mere pretenses. They are at liberty—indeed are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the Constitution."

In *Gulf, C. F. & S. F. R. Co. vs. Ellis*, 165 U. S., 151, at page 153, the court said:

"The Supreme Court of the State considered this statute as a whole and held it valid and as such it is presented to us for consideration. Considered as such, it is simply a statute imposing a penalty upon railroad corporations for a failure to pay certain debts. No individuals are thus punished and no other corporations. The act singles out a certain class of debtors and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors or equally with other debtors. They cannot appeal to the courts as other litigants under like conditions and with like protection. If litigation terminates adversely to them they are mulcted

in the attorney's fees of the successful plaintiff. If it terminates in their favor they recover no attorney's fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms. They must pay attorneys' fees if wrong. They do not recover any if right, while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties, they are discriminated against and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute."

And at page 159, the court further said:

"But arbitrary selection can never be justified by calling it classification; the equal protection demanded by the Fourteenth Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than those words of Mr. Justice Matthews, speaking for this court in Wickwo *vs.* Hopkins, 118 U. S., 356-369 (30: 220, 226). 'When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal. That they are endowed by their Creator with certain inalienable rights. That among these are life, liberty, and the pursuit of happiness.' While such declaration of principles may not have the force of organic law or be made the basis of judicial decisions as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the

Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

As said in *Hooper vs. State of California, supra*, with regard to the business of an insurance broker:

> *"It is a lawful calling as much as that of a merchant, grocer, manufacturer, tailor, or shoemaker. It cannot properly be characterized as in itself, or by the necessary results of business, hurtful to the community. They have as much right to pursue their calling in California by agent as they have to pursue it in New York."* (Italics ours.)

In *Cotting vs. Godard*, 183 U. S., 79, at page 106, the court said:

> "In Barbier *vs.* Connolly, 113 U. S., 27, 31; 28 L. Ed., 923, 924; 5 Sup. Ct. Rep., 357, 359, it was said: 'The Fourteenth Amendment, in declaring that no State "shall deprive any person of life, liberty, or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of the law," undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property. That they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts, that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and

that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses.' "

We respectfully submit that the judgment appealed from should be reversed, with costs to the plaintiff in error.

Respectfully submitted,

JOHN L. McLAURIN,
Of Bennettsville, S. C.;

R. H. WELCH,
Of Columbia, S. C.,
Attorneys for Plaintiff in Error.

WENDELL P. BARKER,
Of New York City,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 114.

PHILIP LA TOURETTE, PLAINTIFF IN ERROR,

vs.

FITZ HUGH McMASTER, AS INSURANCE COMMISSIONER OF THE STATE OF SOUTH CAROLINA.

BRIEF FOR DEFENDANT IN ERROR.

The questions involved in the assignment of errors by the plaintiff in error are whether the plaintiff in error has been deprived of his property without due process of law; denied the equal protection of the law by reason of the refusal of the Insurance Commissioner of South Carolina to grant him a license as an insurance broker under the act approved March 2, 1916, and has he been denied the privileges and immunities granted to the citizens and residents of the State of South Carolina by reason of such refusal to issue him a license as an insurance broker by the Commissioner of Insurance of South Carolina.

The only section of the act referred to which is before the court for construction is the last paragraph of section 2 of said act, which provides that "under the terms of this act, only such persons may be licensed as are residents of this State and have been licensed insurance agents of this State for at least two years."

It should be noted in the beginning that the provisions of this statute make no discrimination against citizens of another State as such, but they relate to residence, and not to citizenship, which are entirely different things.

The record shows that the plaintiff in error complied with all the conditions requisite for the issuance of a license except the conditions which require residence in South Carolina and a license as an insurance agent of that State for at least two years.

It is a well-recognized principle, and one that needs no citation of authorities, that the writing of insurance and the carrying on of an insurance business is not governed by the laws regulating trade and commerce between the several States, but such matters are entirely within the police powers of the respective States. Practically all of the cases cited in the brief of the plaintiff in error are cases relating to trade regulations, and they are not in point in the case at bar. The practice of law and the practice of medicine, and other professions, are legitimate businesses and occupations, and so recognized, but no one would contend for a moment that a State has no right to prescribe conditions and limitations under which those who are engaged in those professions may practice those professions in the respective States. No one would seriously contend that because he was an able and well-informed lawyer, or eminent physician of his own State and licensed there to practice his profession, that he could be allowed to practice in another State without complying with the laws of that State of which he was not a resident. It is well settled that the business of the insurance against loss of fire is a proper subject for the exercise of the police power

of a State, and that the individual citizen has no inherent right to engage in such business.

> Commonwealth *vs.* Vrooman, 164 Pa. State, 306; 44 Am. State Reports, 603; 25 L. R. A., 250.
> See also German Aliance Ins. Co. *vs.* Lewis, 233 U. S., 389; L. R. A., 1915 C, 1189.

In the case last mentioned, the Supreme Court of the United States held that the business of fire insurance is so far affected with a public interest as to justify legislative regulation of its rates.

The business of an insurance broker is defined by the United States Supreme Court in the case of Hooper *vs.* State of California, 155 U. S., 648-657, as follows:

> "The business of a broker is to serve as a connecting link between the party who is to be insured and the party who is doing the insuring—to bring about the 'meeting of their minds', which is necessary to the consummation of the contract. In the discharge of his business he is the representative of both parties to a certain extent. How. *vs.* Union Mut. L. Ins. Co., 80 N. Y., 32; Monitor Mut. Fire Ins. Co. *vs.* Young, 111 Miss., 537; Hartford Fire Ins. Co. *vs.* Reynolds, 36 Mich., 502."
>
> "Domat thus defines his functions: 'The engagement of a broker is like to that of a proxy, a factor or other agent; but with this difference, that the broker, being employed by persons who having opposite interests to manage, he is, as it were, agent both for the one and the other to negotiate the commerce and affair in which he concerns himself. Thus, his engagement is twofold, and consists in being faithful to all the parties in the execution of what every one of them entrusts him with. And his power is not to treat, but to explain the intentions and to negotiate in such a manner as to put those who employ him in a condition to treat together personally.' Domat, Vol. I, bk. I, title 17, Sec. 1, Stranhan's translation."
>
> "Story says this statement of the functions of a broker is 'a full and exact description according to the sense of our law.' "

The Massachusetts Supreme Court in Commonwealth *vs.* Rosewell, 173 Mass., 121, said:

> "It is within the proper exercise of the police power of the Commonwealth to require that persons acting as insurance brokers or insurance agents shall be licensed, in order that the business may be in the hands of trustworthy persons."
>
> "It is not a violation of the Constitution of the United States to require such a license of persons who are to negotiate, within this State, contracts for insurance upon property outside of the State."

The decision of the Supreme Court of Pennsylvania in Commonwealth *vs.* Vrooman, above cited, held that the business of insurance against loss by fire is a proper subject for the exercise of the police power of a State, and that the Fourteenth Amendment to the Constitution of the United States does not interfere with the proper exercise of this power by the State, which may deny the right to an individual to engage therein.

The purpose of the legislature in restricting the issuance of licenses to residents of the State as insurance brokers was to have the persons transacting such business within its jurisdiction, in order that they might be held personally responsible for any violation of their duties, or failure to faithfully perform the same, resulting in loss to the insuring public transacting business with them. As pointed out in both the Hooper case and the Rosewell case, above cited, the contracts of insurance may be, as they usually are, made by brokers with companies who have not complied with the State laws and are not authorized to do business within its limits, and who cannot be held liable in the courts here for violation of the contracts so made by them, because neither the State courts nor the Federal courts in this State have jurisdiction of their persons.

It is, therefore, essential to the protection of the public in our courts that jurisdiction should be retained over the

person of the broker making such contracts in order that he, at least, may be held responsible to any party injured through his neglect or failure to perform the duty of his occupation.

These considerations justify the State requiring, in the exercise of its police power for the protection of its citizens and residents, that the broker doing business in this State submit himself to the jurisdiction of the State courts by residing within the State.

These reasons have been aptly put by Mr. Justice Hydrick, in delivering the opinion below.

> "There are numerous reasons why regulations of the business could not be made more effective by requiring all brokers and agents soliciting business in the State to be residents of the State. It is important for the protection of the interests of the people of the State that the business should be in the hands of competent and trustworthy persons. It is one of many complications, requiring, for its safe conduct, not only expert knowledge, but such knowledge as can be acquired only by experience in the business. Brokers residing within the State would naturally be in better position to ascertain the character of risks—physical and moral—than those residing in other States. By the terms of this act and others regulating the business, the books, papers, and accounts of such brokers are at all times to be open to the inspection of the commissioner, who is given supervisory control of the business for the protection of the insured as well as the insurers. Now, without question, such supervision can be exercised over brokers residing in the State more expeditiously, advantageously, and effectively than if they resided in many different States of the Union, and the commissioner can more readily ascertain whether they have the requisite skill and ability and are faithful in the performance of their duties and obey the laws of the State. Moreover, they are required to exercise due care in placing insurance, and would be personally liable for neglect of that duty. They are also

> liable to indictment for violations of the laws of the State regulating the business and for disobeying the lawful orders of the commissioner with respect thereto. It is therefore desirable, if not imperatively necessary for the proper regulation of the business, that they should be residents of the State and subject to the jurisdiction of the its courts. These conclusions are sufficient to show that the provision in question is reasonable."

On page 5 of the brief of the plaintiff in error quotation is made from the case of Hooper *vs.* State of California, 155 U. S., 661, as follows:

> "Johnson & Higgins are pursuing one of the ordinary callings of life in the City of New York. It is a lawful calling, as much as that of a merchant, grocer, manufacturer, tailor or shoemaker. It cannot properly be characterized as in itself, or by the necessary results of the business, hurtful to the community. They have as much right to pursue their calling in California by agent as they have to pursue it in New York."

It should only be necessary to state, in connection with the citation made, that it is from the dissenting opinion of Mr. Justice Harlan, and was not the opinion of the court in that case.

The plaintiff in error has not been denied the equal protection of the law, or his rights and immunities as a citizen It is true, as quoted in the argument of counsel for the plaintiff in error, that this court has said:

> "In Barbier *vs.* Connolly, 113 U. S., 27, 31; 28 L. Ed., 923, 924; 5 Sup. Ct. Rep., 357, 359, it was said: 'The Fourteenth Amendment, in declaring that no State "shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that

> equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property. That they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

But in the case of Bell's Gap Railroad Company *vs.* Commonwealth of Pennsylvania, 134 U. S., 232, the court went on to say:

> "But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes called the police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."

And, again, in the case of Phœnix Mutual Life Insurance Company *vs.* McMaster, 237 U. S., 63; 59 L. Ed., 839, the court says:

> "In this general definition, the court recognizes as it always has, that what the equal protection of the law requires is equality of burdens upon those in like situation or condition. It has always been held consistent with this general requirement to permit the States to classify the subjects of legislation, and make differences of regulation where substantial differences of condition exist."

Applying these tests, the statute under consideration is not in conflict with the Fourteenth Amendment to the Federal Constitution.

Respectfully submitted,

THOMAS H. PEEPLES,
Attorney General.

C. N. SAPP,
Assistant Attorney General.

FRED H. DOMINICK,
Of Counsel.